



# Changes to Short-Term Rental Accommodations - Is the Holiday Over

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The Department of Planning and Environment is currently in the process to introduce state-wide planning framework for Short-Term Rental Accommodation (**STRA**) following reforms provided to the *Fair Trading Act 1987* (NSW) and *Strata Schemes Management Act 2015* (NSW) at the end of 2018.

The changes proposed are as a result of the ever growing easily accessible holiday rental market whereby STRA in New South Wales initially compromised of a voluntary Code of Conduct – Holiday Rental Code of Conduct – originally adopted in 2012.

With growth in the industry outpacing policy changes, owner's corporations were forced to use strata laws to manage STRA impacts and locally derived planning controls. Due to the difficulty surrounding the permissibility of uses, concerns have been raised by local communities as a result of noise, parking and house availability. In 2015, the NSW Legislative Assembly Committee on Environment and Planning conducted an inquiry into the adequacy of the regulation into STRA finding that planning laws needed to be amended to regulate the STRA.

The reforms provided in the *Fair Trading Act 1987* (NSW) and *Strata Schemes Management Act 2015* (NSW) introduced:

1. a code of conduct for the short-term rental accommodation industry;
2. a registration system of premises used for short-term rental accommodation; and
3. reforms to strata management powers to allow for prohibition of certain lots to be used for short-term rental accommodation.

## Planning Law Considerations

### Proposed Changes

The proposed changes are to hopefully clarify the planning regulation of STRA within NSW and to:

1. clarify the permissibility of STRA;
2. provide consistency and certainty for the industry community;
3. enable Councils in regional area to respond to local needs; mitigate impacts of STRA on communities.

The proposed amendments are:



- Short-term letting as exempt development 365 days per year when the host is present;
- Permit councils outside Greater Sydney to allow short-term letting all year round if host present or not;
- STRA defined and permissibility;
- Criteria for exempt and complying development for STRA;
- Allowing Councils outside Greater Sydney to set the number of days that a dwelling can be used for STRA without development consent or with a complying development certificate, to no lower than 180 days per year to meet the needs of their communities; and
- Fire safety and evacuation requirements used for STRA.

As the law currently stands, definitions for land uses within the planning system are generally located in the *Standard Instrument Order* 2006. There is currently no state-wide planning definition for STRA not expressly providing for the permissibility of STRA. Currently, some Councils' have defined STRA while other Councils allow the use of STRA without the need of having any approval.

The indicative definition is proposed to include a land use definition to be incorporated into all standard instrument LEPs to be defined as follows:

*“commercial use of an existing dwelling, either wholly or partially, for the purposes of short-term accommodation, but does not include tourist and visitor accommodation”*

The newly defined STRA, defines land use will be permitted in all zones where dwellings are permissible and to be permissible in secondary dwellings. It is proposed that some form of residential accommodation, such as boarding houses, seniors housing and group homes, will be excluded from STRA use to ensure they continue to meet their intended purpose.

## Conclusion

The exhibition period has closed now for the planned proposals with some communities having a mixed response to the proposals, with more recently the Liberal Government providing an exemption to the Byron Shire Council. The Planning Minister Anthony Roberts has promised he would grant a 90-day annual limit on short term letting of empty properties in the area, despite the cap being 180 days in parts of NSW. (See: Lisa Visentin (2019), 'Byron Shire given 'special exemption' to Airbnb restrictions as Nationals fight to win Ballina', SMH, 11 February

<https://www.smh.com.au/politics/nsw/byron-shire-given-special-exemption-to-airbnb-restrictions-as-nationals-fight-to-win-ballina-20190211-p50x2d.html>)